

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
Rulemaking to Amend Parts 1, 2, 21, and 25)
of the Commission's Rules to Redesignate)
the 27.5 - 29.5 GHz Frequency Band, to)
Reallocate the 29.5 - 30.0 GHz Frequency)
Band, to Establish Rules and Policies for)
Local Multipoint Distribution Service and)
for Fixed Satellite Services)

CC Docket No. 92-297

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and)

Suite 12 Group Petition for Pioneer's)
Preference)

PP-22

COMMENTS OF AMERITECH

Ameritech respectfully files these Comments in the above-captioned matter, to provide the Federal Communications Commission ("Commission") with its views on a limited number of issues raised in the pending Third Notice of Proposed Rule Making and Supplemental Tentative Decision.¹

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I. INTRODUCTION AND SUMMARY

Ameritech's Comments relate to three specific areas of the Commission's proposed regulatory structure for LMDS. First, no artificial

¹ In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band, to Reallocate the 29.5 - 30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference, CC Docket No. 92-297, Third Notice of Proposed Rule Making and Supplemental Tentative Decision ("Third Notice"), released July 28, 1995.

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“cross-ownership” bans should be imposed in the LMDS licensing process, as such steps would unnecessarily exclude many potential marketplace entrants who are otherwise well equipped and positioned to advance the development and deployment of the service. Second, partitioning of LMDS service areas should be permitted by the Commission’s licensing structure, to encourage deployment of the service in what each service provider deems the most economically and technically suitable manner for its particular application. Third, the overall structure chosen for LMDS should not assume that Title II regulation applies, on a default basis, to all services delivered using the technologies involved.

II. NO LMDS CROSS-OWNERSHIP RESTRICTIONS ARE JUSTIFIED.

Ameritech strongly supports the Commission’s conclusion that the “telco-cable cross-ownership ban” contained in the 1984 Cable Act does not prohibit telephone companies from holding licenses in the LMDS service.² As aptly noted by the Commission, the term “cable system,” as used in the Cable Act, has been held to apply only to “video delivery systems that employ cable, wire or other physically closed or shielded transmission paths.”³ Likewise, the Commission’s tentative conclusion that no statutory or regulatory restrictions prohibit a cable operator from holding interest in an

² Third Notice, at 37 (¶ 100).

³ Ibid. (emphasis added).

LMDS license is clearly supported by the language of the statute in question in that regard.⁴

Broader public policy reasons dictate this result as well. The many potential uses of the spectrum under consideration in this proceeding make it obvious that the core business of a potential applicant should not serve as a basis for blanket exclusion of otherwise-qualified applicants from the use of a specific technology. As envisioned by the Commission, LMDS may be used to provide a broad range of services, including video distribution, broadband video telecommunications, and two-way data and voice subscriber services.⁵ The Commission is wise to refuse to structure its regulatory approach to LMDS according to its possible uses by particular classes of licensees.⁶ Such artificial regulatory "handicapping" of marketplace entrants is clearly inappropriate in today's world of rapid proliferation of telecommunications services and the blurring distinctions among the technologies used to deliver them.⁷ It is the use of a technology that matters to consumers, not the category of the providers that make use of it to deliver those services.

⁴ Ibid., at 39 (¶ 104).

⁵ Ibid., at 35 (¶ 93).

⁶ For example, several wireless cable operators are on record as being "opposed to permitting LEC participation." Third Notice, at 37 (¶¶ 99, fn 96). These identical commentators also argued against permitting cable television companies to hold LMDS licenses. Ibid., at 38-9 (¶ 103, fn 101). Presumably, these parties would also oppose entry onto their "turf" by any other class of service provider outside their own category.

⁷ The Commission recently followed this principle in determining that the use of SMATV systems by cable operators does not change the character of the cable television business that uses these systems. In the Matter of Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits, Cross-ownership Limitations and Anti-Trafficking Provisions, MM Docket No. 92-264, Memorandum Opinion and Order, released January 30, 1995, at 16 (¶¶ 37).

III. PARTITIONING OF LMDS SERVICE AREAS SHOULD BE PERMITTED

There is ample support for the Commission's tentative conclusion that geographic partitioning of any part of a licensed LMDS service area is appropriate.⁸ This approach will facilitate more rapid service deployment across entire service areas, by enabling different service providers to utilize this technology as a component part of its delivery architecture where it is economically and technically desirable for each provider to do so. Broad-area cable television service coverage, for example, carries a significant capital investment requirement; thus, deployment of the inherent cable plant in some less densely-populated areas may not always be economically justified.

On the other hand, the "cellular" nature of LMDS technology may often prove better-suited for delivery of television programming to a relatively small geographic area which might otherwise be bypassed by the main cable television facilities. Permitting partitioning would essentially make LMDS a potential architecture choice for cable operators who otherwise would not likely provide service in such areas. The other factors cited in favor of this decision (including the relatively high cost of LMDS construction, the shorter transmission paths which it provides, and the limitation of service to consumers within the reach of cell transmitters)⁹ also strongly support the Commission's decision on this topic.

⁸ Third Notice, at 34 (¶ 90).

⁹ Ibid.

IV. TITLE II REGULATION SHOULD NOT BE PRESUMED FOR LMDS

The Third Report and Order posits three choices for an overall regulatory regime for LMDS: (1) a presumptive Title II common carriage environment; (2) self-election of LMDS licensees as either private or common carriers; and (3) a presumptive Title II environment, with a carrier option to file notice of intent to operate as a private carrier.¹⁰ The first and last of these would be inappropriate choices, as they presume a Title II construct without further analysis of a particular use.

Given the early level of LMDS' current technical development, and the uncertainty regarding the services which may ultimately be offered using LMDS as a delivery technology, it would be premature to force the nascent industry into a regulatory "pigeonhole." Such a step would also burden carriers seeking to enter this marketplace with unnecessarily stringent regulatory requirements and costs -- a particularly inappropriate step in the case of LMDS, which is currently a virtual hothouse for entrepreneurial activity. Assessing the individual services which are eventually provided via the vehicle of LMDS technology, rather than the underlying technology itself, would be a better approach in this regard.

¹⁰ Ibid., at 35-6 (¶¶94-96).

V. CONCLUSION

Ameritech applauds the Commission's significant strides in the four years since CeLularVision's predecessor (Hve Crest Inc.) was first licensed to provide LMDS services in the New York City area. Continued progress is to be anticipated and welcomed in this ongoing effort to ensure the rapid dissemination of innovative communications services to consumers across the country.

Respectfully submitted,

A handwritten signature in cursive script, reading "Frank Michael Panek". The signature is written in black ink and is positioned below the "Respectfully submitted," text.

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